



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0669; FRL-9956-66-Region 9]

Determination of Attainment of the 2008 Ozone National Ambient Air Quality Standards;

Mariposa County, California

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to determine that the Mariposa County, California Moderate Nonattainment Area (NAA) has attained the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or “standards”). This determination is based on complete, quality-assured and certified data for 2013-2015. Preliminary data for 2016 are consistent with continued attainment of the standards in the Mariposa County NAA. This determination suspends any unfulfilled obligations to submit revisions to the state implementation plan (SIP) related to attainment of the 2008 ozone standards for the Mariposa County NAA for as long as the area continues to meet those standards.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comments, the EPA will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0669 at <http://www.regulations.gov>, or via email to levin.nancy@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972-3848, levin.nancy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us” or “our” is used, we mean the EPA.

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- I. What is the Background for this Action?**
 - A. *Ozone NAAQS, Area Designations and Classifications*

The Clean Air Act (CAA or “Act”) requires the EPA to establish national primary and secondary standards for certain widespread pollutants, such as ozone, that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare.¹ In the 1970s, the EPA promulgated primary and secondary ozone standards, based on a 1-hour average. In 1997, we replaced the 1-hour ozone standards with primary and secondary 8-hour ozone standards. In 2008, we tightened the 8-hour ozone standards to the level of 0.075 parts per million (ppm), daily maximum 8-hour average.² *See* 73 FR 16436 (March 27, 2008); 40 CFR 50.15. Since the primary and secondary ozone standards are the same, we refer to them hereafter in this document using the singular “2008 ozone standard” (or simply “standard”) or NAAQS.

¹ *See* sections 108 and 109 of the Clean Air Act (CAA or “Act”). Primary standards represent ambient air quality standards the attainment and maintenance of which the Environmental Protection Agency (EPA) has determined, including a margin of safety, are requisite to protect the public health. Secondary standards represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. CAA section 109(b).

² In 2015, we tightened the ozone National Ambient Air Quality Standards (NAAQS or “standards”) even further and established 0.070 parts per million (ppm), 8-hour average, as the new ozone NAAQS. *See* 80 FR 65292 (October 26, 2015). While the 1979 1-hour ozone NAAQS and 1997 8-hour ozone NAAQS have been revoked, the 2008 ozone NAAQS remains in effect.

The 2008 ozone standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P.

The EPA designated NAAs for the 2008 ozone standard on May 21, 2012, effective July 20, 2012 (77 FR 30088). In that action, the EPA classified (by operation of law) the Mariposa County, California³ NAA as a “Marginal” nonattainment area. The original attainment date for the 2008 ozone standard for this Marginal ozone nonattainment area was as expeditious as practicable but not later than July 20, 2015. *See* 40 CFR 51.1103.

In May 2016, the EPA determined that the Mariposa County NAA failed to attain the 2008 ozone standard by the applicable attainment date of July 20, 2015, and reclassified the area to the next higher classification, *i.e.*, “Moderate.” Our determination was based on complete, quality-assured and certified data for 2012-2014.⁴ States with Moderate ozone NAAs are required to submit revisions to the applicable SIP that comply with the requirements set forth in subpart 2 of part D of title I of the CAA and in the EPA’s ozone implementation rule for the 2008 ozone NAAQS in 40 CFR part 51, subpart AA. The relevant SIP requirements include, among other requirements, attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, and contingency measures for failure to attain or make RFP. The applicable attainment date for areas classified as Moderate

³ Mariposa County is located in central California and is the southern-most county within the air basin designated by California as the Mountain Counties Air Basin. The nonattainment area designation for Mariposa County encompasses the entire county.

⁴ 81 FR 26697 (May 4, 2016). The 2012-2014 design value for the Mariposa County NAA was 0.078 parts per million, which exceeded the 2008 ozone NAAQS of 0.075 ppm, daily maximum 8-hour average. We note that today’s action is based on the 2013-2015 design value.

nonattainment for the 2008 ozone NAAQS is as expeditious as practicable but not later than July 20, 2018. *See* 40 CFR 51.1103.

B. Relevant Statutory and Regulatory Requirements

Under the provisions of EPA's ozone implementation rule for the 2008 ozone NAAQS, if the EPA issues a determination that an area is attaining the relevant standard, also known as a Clean Data Determination, the requirements for such area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures and other planning SIPs related to attainment of the 2008 ozone NAAQS are suspended until such time as the area is redesignated to attainment for the 2008 ozone NAAQS. However, if the EPA later determines, through notice-and-comment rulemaking, that the area has again violated the 2008 ozone NAAQS, the area is again required to submit such plans. *See* 40 CFR 51.1118. While these requirements are suspended, the EPA is not precluded from acting upon these SIP elements at any time if submitted to the EPA for review and approval.

C. Ambient Air Quality Monitoring Data

A determination of whether an area's air quality meets the 2008 ozone NAAQS is generally based upon three consecutive calendar years of complete, quality-assured data measured at established State and Local Air Monitoring Stations (SLAMS) in the NAA and entered into the EPA Air Quality System (AQS) database. Data from ambient air monitoring sites operated by state or local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of an area. *See* 40 CFR 50.15; 40 CFR part 50, Appendix P; 40

CFR part 53; 40 CFR part 58, Appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix P.

The 2008 ozone standard is met at an ambient air quality monitoring site when the design value is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P. *See* 40 CFR 50.15. The design value is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. For the purpose of comparison with the 2008 ozone standard, the design value for a site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. When the design value is less than or equal to 0.075 ppm (based on the rounding convention in 40 CFR part 50, Appendix P) at each monitoring site within the area, then the area is meeting the NAAQS. The data completeness requirement is met when the 3-year average percent of days with valid monitoring data is at least 90 percent, and no single year has less than 75 percent data completeness as determined in accordance with 40 CFR part 50, Appendix P.

II. What is the EPA's Analysis of the Relevant Air Quality Data?

A. Monitoring Network and Data Considerations

The California Air Resources Board (CARB) and local air pollution control districts and air quality management districts ("districts") operate ambient air monitoring stations throughout the State of California. CARB is the lead monitoring agency in the Primary Quality Assurance Organization (PQAO) that includes all the monitoring agencies in the State with a few exceptions.^{5,6}

⁵ A Primary Quality Assurance Organization (PQAO) means a monitoring organization, a group of monitoring organizations or other organization that is responsible for a set of stations that monitor the same pollutant and for which data quality assessments can be pooled. Each criteria pollutant sampler/monitor at a monitoring station must be associated with only one PQAO. (40 CFR 58.1).

Within the Mariposa County ozone nonattainment area, there is one ozone SLAMS (referred to as the Jerseydale site) that is operated by CARB, and one SLAMS (referred to as the Turtleback Dome site in Yosemite National Park) that is operated by the National Park Service (NPS). The ozone monitoring site operated by NPS at Turtleback Dome is one of many sites throughout the U.S. and Canada that comprise the Clean Air Status and Trends Network (CASTNET).⁷ Ozone monitors at CASTNET sites meet the EPA's ambient air quality monitoring requirements of 40 CFR part 58, and data from such sites are submitted to AQS. Ozone data from CASTNET sites, such as Turtleback Dome, are eligible for use in determining compliance with the ozone NAAQS. CARB is the PQAQO for the Jerseydale site. The NPS is the PQAQO for the Turtleback Dome site.

All state and local air monitoring agencies are required to submit annual monitoring network plans to the EPA.⁸ An annual monitoring network plan discusses the status of the air monitoring network, as required under 40 CFR part 58.10. CARB submits the annual monitoring network plans for the Jerseydale site.

Since 2007, the EPA has regularly reviewed these annual monitoring network plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to ozone, the EPA found that the area's annual monitoring network plans meet the applicable requirements under 40 CFR part 58. *See* EPA letters to CARB approving annual monitoring network plans for

⁶ The Bay Area Air Quality Management District (AQMD), the South Coast AQMD and the San Diego Air Pollution Control District are each designated as the PQAQO for their respective ambient air monitoring programs.

⁷ Clean Air Status and Trends Network (CASTNET) is a national monitoring network established to assess trends in pollutant concentrations, atmospheric deposition and ecological effects due to changes in air pollutant emissions. For additional background on CASTNET, *see* <https://www.epa.gov/castnet>.

⁸ *See* 40 CFR 58.10(a)(1).

the years 2013, 2014 and 2015.⁹ The 2016 CASTNET annual network plan, dated June 23, 2016, includes the Turtleback Dome site.¹⁰

The EPA also concluded from its Technical System Audit of the CARB PQAO (conducted during Summer 2015), that the combined ambient air monitoring network operated by CARB currently meets or exceeds the requirements for the minimum number of SLAMS for the 2008 ozone standard.¹¹ All of the monitoring sites in the PQAO are reviewed with respect to monitoring objectives, spatial scales and other site criteria as required by 40 CFR part 58, Appendix D.

CARB oversees the quality assurance of all data collected within the CARB PQAO. Also, CARB annually certifies that the data it submits to AQS are complete and quality-assured. This includes data from all CARB sites, including the Jerseydale site.¹² Data from the Turtleback Dome site are certified by the NPS.¹³

As noted above, there are two ozone SLAMS monitoring sites operating within the Mariposa County NAA. These sites monitor ozone concentrations on a continuous basis using EPA reference or equivalent methods.^{14, 15}

⁹ Letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, dated March 7, 2014, approving CARB's 2013 annual monitoring network report; letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, dated January 27, 2015, approving CARB's 2014 annual monitoring report; and letter from Meredith Kurpius, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Ravi Ramalingam, Chief Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, CARB, dated November 13, 2015, approving CARB's 2015 annual monitoring network report.

¹⁰ The 2016 CASTNET Annual Network Plan is available at https://www.epa.gov/sites/production/files/2016-07/documents/castnet_plan_2016_final.pdf.

¹¹ Letter from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Richard Corey, Executive Officer, CARB, dated August 31, 2016, transmitting findings of the EPA's 2015 Technical System Audit of the CARB's ambient air monitoring program.

¹² See, e.g., letter from Ravi Ramalingam, Chief, Air Quality Data Branch, CARB, to Elizabeth Adams, Acting Director, Air Division, EPA Region 9, certifying calendar year 2015 ambient air quality data and quality assurance data, May 10, 2016.

¹³ See, e.g., letter from Barkley Sive, Air Resources Division Program Manager, National Park Service, to Lew Weinstock, EPA Office of Air Quality Policy and Standards, certifying calendar year 2015 ambient air quality data and quality assurance, dated April 27, 2016.

Lastly, consistent with the requirements contained in 40 CFR part 50, the EPA has reviewed the quality-assured and certified ozone ambient air monitoring data, as recorded in AQS for the applicable monitoring period, collected at the monitoring sites in the Mariposa County NAA for completeness. The EPA has determined that the data are complete.¹⁶ For the two ozone monitoring sites in Mariposa County, daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring season, on average for the 2013-2015 period, and daily maximum 8-hour average concentrations are available for at least 75 percent of the days within the ozone monitoring season for each individual year within that period.

B. Evaluation of the Ambient Air Quality Data

As noted above, the applicable attainment date for the Mariposa County ozone NAA is July 20, 2018; however, we have reviewed the data collected at the two monitoring sites within that area during the most recent three-year period (2013-2015) to determine whether the area has already attained the 2008 ozone standard. Table 1 shows the fourth-highest daily maximum 8-hour ozone concentrations for 2013 through 2015 at both sites in the Mariposa County ozone NAA and shows the design values for 2013-2015. The design value for a given area is based on the monitoring site in the area with the highest design value. In this case, the design value for 2013-2015 for the Mariposa County ozone NAA is at the Jerseydale site and is 0.075 ppm, which is equal to the standard (i.e., 0.075 ppm). Therefore, we are determining, based on the complete,

¹⁴ See the CARB's *Annual Monitoring Network Report for Twenty-five Districts in California* (July 2015). The EPA approved an ozone season waiver for the Jerseydale site. See letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Ravi Ramalingam, Chief, Consumer Products and Air Quality Assessment Branch, CARB, dated March 8, 2016. The Jerseydale ozone monitor operates only in the warmer six months of the year. The site is at a high elevation where access during the winter can be problematic. Ozone concentrations during the winter at the Jerseydale site are well below the levels of the 2008 ozone standard.

¹⁵ See the CARB's *Annual Monitoring Network Report for Twenty-five Districts in California* (July 2015).

¹⁶ See EPA, Air Quality System, Design Value Report, July 25, 2016.

quality-assured and certified data for 2013-2015, that the Mariposa County Moderate ozone NAA has attained the 2008 ozone standard. We have also reviewed preliminary data for 2016 and find that they are consistent with continued attainment of the standard in the Mariposa County NAA.¹⁷

Table 1 – 2013-2015 Ozone Design Values at Sites within the Mariposa County NAA					
Monitoring Site	AQS Site Identification Number	Fourth-Highest Daily Maximum 8-Hour Ozone Concentration (ppm)			Design Value (2013-2015)
		2013	2014	2015	
Yosemite NP – Turtleback Dome	06-043-0003	0.073	0.077	0.073	0.074
Jerseydale	06-043-0006	0.077	0.077	0.071	0.075

Source: EPA AQS Quick Look Report (AMP450), August 10, 2016.

III. What is the Effect of this Action?

With this determination that the Mariposa County ozone NAA has attained the 2008 ozone NAAQS, the obligation on the State of California to submit SIP revisions related to attainment of the 2008 ozone standard in Mariposa County, including but not limited to SIP revisions demonstrating attainment and RFP, is suspended until such time as Mariposa County is redesignated to attainment for the 2008 ozone standard, at which time the requirements no longer apply. However, if the EPA determines, through notice-and-comment rulemaking, that Mariposa County has once again violated the 2008 ozone NAAQS, then the area is again required to submit the attainment-related SIP revisions. *See* 40 CFR 51.1118.

¹⁷ *See* EPA's Ozone Watch. The November 8, 2016 Ozone Watch reports that the preliminary 2014-2016 Design Value for Mariposa County 2008 ozone NAA is 0.075 ppm.
http://oaqpsapps.epa.gov/MadeInAQAG/index.php?title=Ozone_Watch

This final determination of attainment for the Mariposa County NAA does not constitute a redesignation to attainment. Under CAA section 107(d)(3)(E), redesignations to attainment require states to meet a number of additional statutory criteria, including EPA's approval of a SIP revision demonstrating maintenance of the standard for 10 years after redesignation. The designation status of the Mariposa County area will remain Moderate nonattainment for the 2008 ozone NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment.

IV. Final Action

The EPA is taking direct final action to determine that the Mariposa County Moderate ozone NAA has attained the 2008 ozone standard based on complete, quality-assured and certified ambient air quality monitoring data for the 2013-2015 monitoring period. Preliminary data for 2016 are consistent with continued attainment of the standard in the Mariposa County NAA. Upon the effective date of this determination, the requirements for the Mariposa County NAA to submit planning SIPs related to attainment of the standard are suspended until the area is redesignated or the EPA determines that the area has violated the standard, at which time the area would again be required to submit such plans.

We do not think anyone will object to this determination, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing to make the same determination made herein. If we receive adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final action will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the

direct final action will be effective without further notice on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

V. Statutory and Executive Order Reviews

This action makes a determination based on air quality data and does not impose additional requirements beyond those imposed by state law. For that reason, the action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian tribes, and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in

response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Volatile organic compounds.

Dated: December 2, 2016.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F — California

2. Section 52.282 is amended by adding paragraph (j) to read as follows:

§ 52.282 Control strategy and regulations: Ozone

* * * * *

(j) *Determination of attainment.* The EPA has determined that, as of [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], the Mariposa County 2008 8-hour ozone nonattainment area in California has attained the 2008 ozone standard, based upon complete, quality-assured and certified data for 2013-2015. Under the provisions of the EPA's ozone implementation rule (see 40 CFR 51.1118), this determination suspends the requirements for the area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable further progress and other planning SIPs related to attainment of the 2008 ozone standard for as long as the area continues to attain the 2008 ozone standard. If the EPA determines, after notice-and-comment rulemaking, that the Mariposa County ozone nonattainment area no longer meets the 2008 ozone standard, the corresponding determination of attainment for this area shall be withdrawn.

[FR Doc. 2016-30477 Filed: 12/20/2016 8:45 am; Publication Date: 12/21/2016]